

MICHAELA E. TRAMEL, ESQ.  
Nevada Bar No. 9466  
**TRAMEL LAW GROUP LLC**  
9480 S. Eastern Ave., Ste. 257  
Las Vegas, NV 89123  
Phone: (702) 233-2244  
Fax: (702) 685-9412  
*Attorney for Plaintiff*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \* \*

DEBORAH BURNETT-PIRRONE, )

Plaintiff,

V.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, an Illinois  
corporation; DOES I through X, and ROE  
CORPORATION I through X, inclusive,

### Defendants.

## **MOTION FOR REMAND**

COMES NOW, Plaintiff, DEBORAH BURNETT-PIRONE, by and through her attorney, MICHAELA E. TRAMEL, ESQ., of TRAMEL LAW GROUP LLC, and hereby moves this Court to remand this action to the State Court as diversity of jurisdiction does not exist pursuant to the terms of 28 USC § 1332 (a)(1).

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This Motion is pursuant to 28 USC § 1441 (c) and this Court's inherent powers. Said Motion is made and based upon the accompanying Memorandum of Points and Authorities, the pleadings and documents on file herein and any oral argument at hearing on the matter.

DATED this 5<sup>th</sup> day of May, 2015.

**TRAMEL LAW GROUP LLC**

By:

MICHAELA E. TRAMEL, ESQ.  
Nevada Bar No. 9466  
9480 S. Eastern Avenue, Ste. 257  
Las Vegas, NV 89123  
*Attorney for Plaintiff*

## **MEMORANDUM OF POINTS AND AUTHORITIES**

L.

## **FACTUAL AND PROCEDURAL OVERVIEW**

On March 25, 2010 Plaintiff, Deborah Burnett-Pirrone (hereinafter “Plaintiff), was stopped for a red traffic signal on the I-215 Stephanie Street off-ramp in Henderson, Nevada. Jerry Kmiec was traveling directly behind Plaintiff and failed to stop and impacted Plaintiff’s vehicle. On July 26, 2012, Mr. Kmiec’s insurance carrier, Farmers Insurance Company, tendered a settlement amount of \$99,999.99 to Plaintiff.<sup>1</sup>

Prior to the March 25, 2010 collision, Plaintiff purchased a policy of automobile insurance from Defendant State Farm (hereinafter “State Farm”), which included uninsured/underinsured (“UIM”) limits of \$50,000/\$100,000.<sup>2</sup>

<sup>1</sup> See Acceptance of Offer of Judgment, attached as Exhibit "1."

<sup>2</sup> See Proof of Limits, attached as Exhibit "2."

1 On September 29, 2011, Plaintiff made a \$50,000.00 UIM policy limits demand on State  
 2 Farm, documenting past medical expenses in the amount of \$35,854.67, emotional distress and  
 3 anguish. On October 25, 2011, State Farm declined the UIM benefits to Plaintiff.<sup>3</sup>

4 Thus State Farm has taken the position that Plaintiff's UIM claim has a zero value after  
 5 taking into consideration the \$99,999.99 offset already received. As such, Plaintiff was forced to  
 6 file a Complaint against State Farm.

7 Plaintiff filed her Complaint on March 12, 2015, in the Eighth Judicial District Court of  
 8 the State of Nevada. Plaintiff's Complaint alleged: 1) Breach of Contract; 2) Violation of the  
 9 Unfair Claims Practices Act; and 3) Breach of the Covenant of Good Faith and Fair Dealing.  
 10 Plaintiff's claims for relief pray for general damages in excess of \$10,000.00, special damages,  
 11 punitive damages and attorney's fees and costs.

12 On April 22, 2015, State Farm electronically served its Statement of Removal. Within  
 13 the Statement of Removal, Defendant asserted that the jurisdictional amount in the controversy  
 14 exceeded \$75,000.00 because 1) Plaintiff has made a claim for UIM Policy of \$50,000/\$100,000,  
 15 and 2) the Plaintiff's claim for punitive damages.

16 **II.**

17 **ARGUMENT**

18 Under Section 1332 of the United States Code, the United States District Court has  
 19 original jurisdiction "of all civil actions where the matter in controversy exceeds the sum or value  
 20 of \$75,000.00, exclusive of interest and costs, and is in between...citizens of different states."<sup>4</sup>  
 21 Removal of an action over which the Court has diversity jurisdiction by 28 U.S.C. Section 1441  
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 23 (a). Section 1441 (a) provides that "any civil action brought in a state court in which the District  
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 28 <sup>3</sup> See letter from State Farm dated October 25, 2011 denying UIM claim, attached as Exhibit "3."  
<sup>4</sup> 28 U.S.C. § 1332 (a)(1).

Courts of the United States have original jurisdiction, may be removed by the Defendant or the  
 1 Defendants to the District Court of the United States for the District and Division embracing the  
 2 place where such action is pending.<sup>5</sup> Section 1447 (c) provides “if at any time before final  
 3 judgment it appears that the District lacks subject matter jurisdiction, the case shall be  
 4 remanded.”<sup>6</sup>

A Federal Court’s removal jurisdiction is statutory and is to be strictly construed.<sup>7</sup>  
 5 “Federal jurisdiction must be rejected if there is any doubts as to the right of removal in the first  
 6 instance.”<sup>8</sup> Where the amount in controversy is in doubt in diversity cases, “the Supreme Court  
 7 has drawn sharp distinction between original jurisdiction and removal jurisdiction.”<sup>9</sup> The Ninth  
 8 Circuit Court of Appeal explained in *Gaus v. Miles*,<sup>10</sup> that in a suit originally brought in Federal  
 9 Court, the amount in controversy requirement will be satisfied unless it appears that the  
 10 Plaintiff’s claim may be for less than the jurisdictional amount.<sup>11</sup> However, in suits originally  
 11 brought in State Court and then removed, there exists “a strong presumption” against removal  
 12 jurisdiction such that the Defendant bears the burden of establishing that removal is proper.<sup>12</sup>  
 13 Specifically, once the Defendant’s allegations of jurisdictional facts are challenged by the  
 14 Plaintiff or the Court, the Defendant has the burden of proving the facts to support jurisdiction,  
 15 including the jurisdictional amount, if it is unclear what amount of damages the Plaintiff has  
 16 sought.<sup>13</sup> The Ninth Circuit held in *Gaus* that when it is unclear what amount of damages the  
 17 Plaintiff has sought, “the removing Defendant bears the burden of proving by a preponderance of  
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 25 <sup>5</sup> 28 U.S.C. § 1441 (a).  
 26 <sup>6</sup> 28 U.S.C. § 1447 (c).

<sup>7</sup> *Ritchey v. UpJohn Co.*, 139 F.3d 1313, 1326 (9<sup>th</sup> Cir. 1998).

<sup>8</sup> *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9<sup>th</sup> Cir. 1992).

<sup>9</sup> See *Gaus*, 980 F.2d at 566; *St. Paul Mercury Inem. Co. Red Cab, Co.*, 303 U.S. 282, 288-90 (1938).

<sup>10</sup> 980 F.2d 564 (9<sup>th</sup> Cir. 1998).

<sup>11</sup> *Id.* at 566.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 566-67.

1 evidence that the amount in controversy exceeds [\$75,000.00].”<sup>14</sup> Moreover the Ninth Circuit  
 2 has held that Defendants in cases such as this must prove by a preponderance of the evidence that  
 3 the jurisdictional amount has been met; this means that it must be “more likely than not” that the  
 4 amount in controversy exceeds \$75,000.00.<sup>15</sup> The obvious purpose of requiring Defendant to  
 5 offer its proof in its removal petition is to avoid the expense of the Court’s time and the parties’  
 6 time and money that is involved in the Motion practice associated with the likely and  
 7 forthcoming Motion to Remand.

9 In this case, State Farm only insures Plaintiff for \$50,000.00 and Plaintiff has  
 10 \$35,854.67 in medical specials. State Farm has not provided any evidence that a jury would  
 11 award more than the amount of the policy at issue. Upon denying Plaintiff’s \$50,000.00 UIM  
 12 policy limit demand, State Farm stated that the: “claim does not exceed the applicable offsets.”<sup>16</sup>  
 13 Now, State Farm has taken the incredible position that Plaintiff’s UIM claim has a value in  
 14 excess of \$75,000.00 after the applicable offset. However as stated previously, State Farm has  
 15 failed to proffer any evidence to support its contention that the value of this case exceeds  
 16 \$75,000.00. Accordingly, Plaintiff requests this case be remanded back to state court.  
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27       <sup>14</sup> Singer v. State Farm Mut. Auto. Ins. Co., 116 F.3d 373, 376 (9<sup>th</sup> Cir. 1997) (citing Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9<sup>th</sup> Cir. 1996)).

28       <sup>15</sup> Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9<sup>th</sup> Cir. 1996).

<sup>16</sup> Exhibit 3

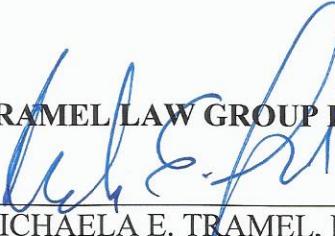
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III.

2  
**CONCLUSION**

3 Therefore, Plaintiff respectfully moves for this case to be remanded back to state court  
4 for further proceedings.

5 DATED this 5<sup>th</sup> day of May, 2015.  
6

7 TRAMEL LAW GROUP LLC  
8

By:   
9 MICHAELA E. TRAMEL, ESQ.  
10 Nevada Bar No. 9466  
11 9480 S. Eastern Avenue, Ste. 257  
12 Las Vegas, NV 89123  
13 *Attorney for Plaintiff*

AFFIDAVIT OF MICHAELA E. TRAMEL, ESQ.  
IN SUPPORT OF MOTION TO REMAND

STATE OF NEVADA                    )  
  }  
COUNTY OF CLARK                    )ss.

I, MICHAELA E. TRAMEL, ESQ., being duly sworn, hereby deposes and says:

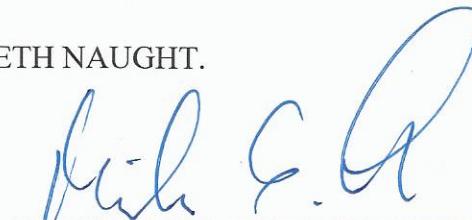
1. I am an attorney duly licensed to practice before all Courts of this State and am a  
2 member of the law firm of TRAMEL LAW GROUP, LLC, attorney for Plaintiff, herein. I have  
3 personal knowledge of the following facts and if called upon could completely testify to such  
4 facts.

5 2. A true and correct copy of the Acceptance of Offer of Judgment is attached hereto  
6 as Exhibit "1."

7 3. A true and correct copy of the May 4, 2010 letter is attached hereto as Exhibit  
8 "2."

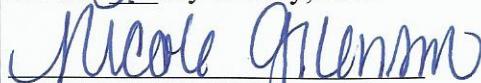
9 4. A true and correct copy of the October 25, 2011 letter is attached hereto as  
10 Exhibit "3."

11 FURTHER YOUR AFFIANT SAYETH NAUGHT.



MICHAELA E. TRAMEL, ESQ.

12 Subscribed and sworn to before  
13 me this 5th day of May, 2014



14 NOTARY PUBLIC in and for  
15 said COUNTY and STATE



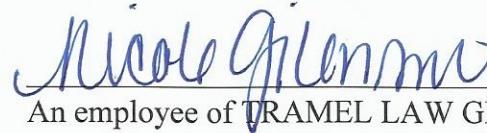
1                   CERTIFICATE OF SERVICE  
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Pursuant to FRCP 5, I hereby certify that I am an employee of TRAMEL LAW  
GROUP LLC and that on the 5<sup>th</sup> day of May, 2015, I caused to be served via CM/ECF a true  
and correct copy of the document described herein.

7                   **Document Served: Motion for Remand**  
8  
9

10                  **Person (s) Served:**  
11  
12

George M. Ranalli, Esq.  
John William Kirk, Esq.  
**RANALLI & ZANIEL, LLC**  
2400 W. Horizon Ridge Parkway  
Henderson, NV 89052  
*Attorneys for Defendant*

13  
14                    
15                  An employee of TRAMEL LAW GROUP LLC  
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# EXHIBIT 1

ACCP  
RANDALL TINDALL  
State Bar No. 006522  
**DAVID L. RIDDLE & ASSOCIATES**  
7455 Arroyo Crossing Parkway, Suite 200  
Las Vegas, NV 89113  
Phone: (702) 408-3800  
BLO9L@yahoo.com  
Attorney for Defendant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

DEBORAH BURNETT-PIRrone,

**Plaintiff**

CASE NO. A-11-652359-C

DEPT. NO. XXVII

JERRY I. KMIEC; DOES I through X, inclusive,

Defendants.

## **ACCEPTANCE OF OFFER OF JUDGMENT**

Defendant gives notice he accepts Plaintiff's \$99,999.99 offer of judgment.

DATED: July 16, 2012

## DAVID L. RIDDLE & ASSOCIATES

BY:

RANDALL TINDALL  
Attorney for Defendant

# EXHIBIT 2

# State Farm Insurance Companies



May 4, 2010

State Farm Insurance Companies  
P.O. Box 22105  
Tempe, AZ 85285-2105  
FAX: 1-888-759-9032

Michaela Tramel  
Tramel Law Group  
400 No Stephanie St, Ste 210  
Henderson, NV 89014

RE: Claim Number : 28-3389-321  
Date of Loss : March 25, 2010  
Our Insured : Deborah A Burnett-Pirrone  
Your Reference: Deborah Burnett-Pirrone

Dear Ms. Tramel:

Please allow this letter to acknowledge your representation of our insured. Ms. Burnett-Pirrone carried Medical Payments Coverage with \$5,000.00 limits and Underinsured Motorist Coverage with 50/100 limits.

Enclosed is a brief explanation letter for Underinsured Motorist Coverage, along with an authorization form. Please help our insured comply with her contractual obligation by completing and returning the form to us with a list of medical providers.

Also, we still need initial injury and treatment information from your office, and your assistant has informed us that this information must come directly from you. Please contact us at your earliest opportunity. Your time and assistance is appreciated.

Sincerely,

Angela Head  
Claim Representative  
(800) 324-0704 ext. 23171

State Farm Mutual Automobile Insurance Company

# EXHIBIT 3



# State Farm Insurance Companies

October 25, 2011

State Farm Insurance Companies  
P.O. Box 52280  
Phoenix, AZ 85072  
FAX: 1-888-759-9032

Tramel Law Group  
400 No Stephanie St, Ste 210  
Henderson, NV 89014

RE: Claim Number : 28-3389-321  
Date of Loss : March 25, 2010  
Our Insured : Deborah A Burnett-Pirrone  
Your Reference: Deborah A Burnett-Pirrone

Dear Mr. Tramel:

Please allow this letter to acknowledge the receipt of your Underinsured Motorist Coverage demand for our insured. Based on the current information available the value of Mrs. Burnett-Pirrone's claim does not exceed the applicable offsets.

I would like to obtain some additional information from doctors Rosler and Grover regarding Mrs. Burnett-Pirrone's complaints related to this loss versus degenerative changes, prognosis and potential future treatment. Please help Mrs. Burnett-Pirrone comply with her contractual obligation by completing and returning the medical authorization form to us, so we can request this additional information.

Thank you for your time and if you have any questions or concerns, please contact us at the number below.

Sincerely,

Lindsay Ainsworth  
Claim Representative  
(800) 324-0704 ext. 23171

State Farm Mutual Automobile Insurance Company

Enclosure(s): Med auth  
Fax only (702) 685-9412